IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1948 (MS) OF 2001

(Old No. 52517/99)

M/s J.K. Sales Agencies,
Tera Palace, Nainital Road,
Haldwani, District-Nainital,
Through its Partner Sri
Sudhir Kumar. .....Petitioner.

Versus

1. State of U.P.,
   through Secretary,
   Department of Revenue,
   U.P. Sashan, Lucknow.
2. Commissioner,
   Kumaon Division, Nainital.
3. Collector/District Magistrate,
   Nainital.
4. Addl. District Magistrate,
   (Finance & Revenue),
   Nainital. .....Respondents.

Dated: 14.06.2006

Hon'ble Rajesh Tandon, J.)

Heard Sri Manoj Tiwari, Advocate for the petitioner and Standing Counsel for the respondents.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 13th October, 1999 and 25th May, 1999 (Annexures No. 7 and 4 to the writ petition

respectively) passed by the respondents no. 2 and 4 respectively.

Briefly stated, in the year, 1992, an agreement was executed between the petitioner and the vendor of the shop situate opposite District Hospital. The petitioner has paid an amount on easy instalment and after the last instalment, the sale deed was executed on 17.05.1995 in favour of the petitioner and it was registered on 12. 06.1995. He has paid the stamp duty to the extent of Rs. 14,500/- against the sale consideration of Rs. 1,00,000/- in accordance with the circle rate/market rate in the locality.

A notice dated 22.01.1999 was served upon the petitioner by the ADM (Finance & Revenue) and objection was filed by the petitioner stating therein that he has purchased small shop measuring 38.125 square metre for a price of Rs. 1 lac on which the stamp duty amount to Rs. 14500/- has already been paid on the basis of the actual price.

Petitioner has stated that in respect of the similar shop No. 6-A situate in the same Tara Palace Complex standing over Plot No. 1044 in Village Damuadhunga, Haldwani having an area of 8.295 square metres. The pseson concerned was directed to pay the deficit stamp duty of Rs. 942/- and the sale price of the land was assessed at Rs. 1,32,000/-. The same area and the same complex, the petitioner has been valued at Rs. 3,68,625/-.

Both the courts below have calculated the stamp duty to the following extent:-

“उक्त दुकान का बाजार मूल्य हेतु अनुमानित मासिक किराया वर्ष 1995 में 1,000/— रू0 से कम नहीं माना जा सकता है। तदनुसार प्रश्नगत दुकान का मूल्यांकन 1000x12x25=3,00,000/- रू0 होता है। इस प्रकार सम्पूर्ण सम्पत्ति का मूल्यांकन 3,68,625/- रू0 होता है, जिस पर देय

स्टाम्प शुल्क 53,505 रू0 था। विपक्षी द्वारा 14,500/– रू0 स्टाम्प शुल्क पूर्व में अदा किया है, शेष 39,005/– रू0 स्टाम्प शुल्क प्रश्नागत विलेख पर और देय होता है।"

The aforesaid order was confirmed. The petitioner has two grievances:-

1) similar area has been taken into consideration on a lesser values, whereas the petitioner has been shown the value to the extent of 3,68,000/-.

2) the circle rate, which has been taken into consideration i.e. 1500-1800 and the maximum has been taken into consideration and apart from that a sum of Rs. 1,000/- has been taken to be the rental value in absence of any evidence on the record.

Rule 341 of the *U.P. Stamp rules, 1997* is quoted below:-

341. For the purposes of payment of stamp duty, the minimum market value of immovable property forming the subject of an instrument of conveyance, exchange, gift, settlement, award or trust, referred to in Section 47-A(1) of the Act, shall be deemed to be not less than that as arrived on the basis of the multiples given below:-

(i) Where the subject is land--

(a) in case of Bhumidhari-800 times the land revenuer;

(b) in case of Sirdari land-400 times the land revenue;

(c) where the land is not assessed to revenue but net profits have arisen from it during the three years immediately preceding the date of the instrument 25 times the annual average of such profits;

(d) where the land is not assessed to revenue and not profits have arisen from it during the three years immediately proceeding the date of the instrument 400 times the assumed annual rent;

(e) where the land is non-agricultural and is situate within the limits of any local body referred to in clause © of the sub-rule (i) Rule 340-equal to the value worked out on the basis of the average price per square metre, prevailing in the locality on the date of the instrument,

(ii) where the subject is grove or garden--

(a) If assessed to revenue the value of the land shall be worked out in the manner laid down in Rule 341 (i) (a) and the value of the trees standing thereon shall be worked out according to the average price of the trees of the same size, and age prevailing in the locality on the date of the instrument.

(b) If not assessed to revenue or in exempted from it, the value thereof shall be determined at 20 times the annual rent plus the premium or 20 times of the annual average of income which has arisen during the three years immediately preceding the date of instrument and the value of the trees thereon shall be determined in accordance with Rule 341(ii) (a).

(iii) Where the subject is building-

(a) Where the building is assessed to house tax and is occupied by the owner or is wholly or partly let out to tenants---25 times the actual or assessed annual rental value, whichever is higher as the case may be;

(b) where the building is not assessed to house tax and is occupied by the owner or is wholly or partly let out to tenants-25 times the actual or assumed annual rental value, whichever is higher as the case may be."

The contention of the petitioner is that only one shop was purchased and not the entire area has been purchased and

therefore, entire portion has no concern with the sale deed of the petitioner.

In view of the above, the matter is sent back to the ADM for deciding afresh after taking into consideration rules as well as to whether the similar area which has been valued at Rs. 1,32,000/- alone is the same in the locality and the petitioner desires the equal treatment and as such the ADM while taking into consideration, the approximate value of the area at the relevant time, when the sale deed was executed and pass the appropriate order in accordance with law.

Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

14.06.2006
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